

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

SPENCER GROUP HOLDINGS LLC,  
a Nevada limited liability company,

2:09-CV-1571 JCM (LRL)

**Plaintiff,**

V.

FEDERAL DEPOSIT INSURANCE  
CORPORATION, et al.,

#### Defendants.

## ORDER

Presently before the court is plaintiff Spencer Group Holdings, LLC's motion for reconsideration or in the alternative for relief from judgment or order. (Doc. #18). Defendant filed a response (Doc. #19) and plaintiff filed a reply. (Doc. #20)

On February 5, 2010, the court granted defendant Federal Deposit Insurance Commission's (hereinafter "FDIC") motion to dismiss. (Doc. #13) Specifically, the court granted defendant's motion to dismiss because plaintiff had not exhausted 12 § U.S.C. 18's mandatory administrative procedures.

Pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (hereinafter “FIRREA”) the FDIC has the authority to act as receiver for an insured depository institution. 12 U.S.C. § 1821(c)(1). The act requires all claims to be submitted through the FDIC’s procedure prior to the claims bar date. 12 U.S.C. § 1821(d)(5)(c). Claims submitted after the bar date are disallowed and “such disallowance shall be final.” 12 U.S.C. § 1821(d)(5)(C)(I). If the

1 receiver denies a claim, the claimant may then make a judicial determination in federal court. 12  
 2 U.S.C. §§ 1821(d)(6)(A), (B). No court has “jurisdiction over claims made outside the administrative  
 3 procedures of section 1821.” *Henderson v. Bank of New England*, 986 F.2d 319, 320 (9th Cir. 1993).

4       In its motion for reconsideration, plaintiff points to a “nearly identical lawsuit” (Doc. #18)  
 5 wherein it was found to have exhausted its administrative remedies and received a different  
 6 judgment. This court found that plaintiff had not exhausted its administrative remedies because it  
 7 could not provide documentation to verify its assertion that it submitted a proof of claim document  
 8 to the FDIC. Plaintiff failed to provide any new evidence supporting a reversal of this court’s  
 9 decision. The Ninth Circuit has held that, without pursuit and exhaustion of the administrative claim  
 10 process, courts have no jurisdiction. See *Henderson*, 986 F.2d 319 at 320 -321; *Intercontinental*  
 11 *Travel Mktg., Inc. v. Fed. Deposit Ins. Corp.*, 45 F.3d 1278, 1282-1283 (9th Cir. 1994).

12       Plaintiff further requests relief from judgment under FRCP 60(b). Plaintiff claims it is clear  
 13 defendant never mailed a copy of the claims bar date and as such, the time to file has not passed.  
 14 However, plaintiff still does not offer any evidence to dispute the fact that it received the claims  
 15 forms along with the notice of the extended bar date and makes no claim that it had insufficient time  
 16 to file the proper forms. Rather, plaintiff’s motion relies on a technicality.

17       Although, while the Ninth Circuit has held that the FDIC engages in affirmative misconduct  
 18 when it intentionally disregards the mail notice requirement and such misconduct could potentially  
 19 toll the bar date, this is not such a case. See *Intercontinental Travel Mktg.*, 45 F.3d at 1285.  
 20 Plaintiff’s admission that it received the claims form along with the notice of the extended bar date  
 21 greatly diminishes the possibility that the FDIC intended to “lie in ambush awaiting expiration of  
 22 the administrative deadline so that it may dispose of the claim without consideration of its merits”  
 23 as the plaintiff claims in its reply. Therefore, this court finds relief under FRCP 60(b) is inappropriate  
 24 under these circumstances.

25           Accordingly,

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1 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that plaintiff's motion for  
2 reconsideration or in the alternative for relief from judgment or order (Doc. #18) be, and the same  
3 hereby is, DENIED.

4 DATED this 29<sup>th</sup> day of June, 2010.

5 *James C. Mahan*  
6 UNITED STATES DISTRICT JUDGE  
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